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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968 No. 1357

JAMES BISENIUS,

Appellant,

vs.

JAMES KARNS, Commissioner of Motor Vehicles

Appellee.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF WISCONSIN

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS

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Appellant herein in opposition to the motion to dismiss, submits the following brief as to why the questions presented are substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution.

ARGUMENT

THE FEDERAL QUESTION IS SUBSTANTIAL

The uniqueness of a constitutional question makes a sufficiently substantial question in itself to invoke the jurisdiction of the United States Supreme Court under 28 U.S.C. 1257 (2). Griffith v. Connecticut, 218 U.S. 563, 572, 31 S. Ct. 132, 134, 54 L. ed. 1151, 1155 (1910). Where a large class of citizens are concerned the substantiality of the question obviously is greater. The novelty of the question herein is whether a state can compel a citizen to protect his own body from physical harm arising from voluntary choices that do not involve intentional self infliction, without transgressing due process limits. Such a question has never been decided by the United States Supreme Court, and cases cited by appellee involving regulation of wages and working conditions are clearly distinguishable as concerning the employer-employee relationship and enacted to prevent exploitation of one class of persons. Cases involving suicide, noted by appellee as a "grave public wrong" (p. 4 of appellee's brief) are likewise distinguishable from the instant case where the inherently innocuous act of not wearing a helmet, an act which, since the invention of the motorcycle up to the passage of this legislation, was a common and accepted act, (see Coopage v. Kansas, 236 U.S. 1, 35 S. Ct. 240, 59 L. ed. 441 (1915)) and neither "grave" nor a "public wrong". Appellant does not urge this court to sanction suicide or self destruction as appellee seems to suggest in his brief (p. 4), but merely feels that he and the hundreds of thousands of other cyclists should be left free to make these common, personal decisions in the ordinary

affairs of life that affect only themselves, thus allowing them to chart their own destiny, free of state interference, which right up to the instant case had always been recognized in Wisconsin. State v. Redmon, 134 Wis. 89, 114 N.W. 451 (1907) et seq. See also City of Mt. Vernon v. Julian, 17 N.E. 2d 52, 369 Ill 447 (1930).

Appellee urges that the highways constitute a sanctuary the entry upon which demands that the user forfeit those freedoms accruing to him elsewhere, under the guise of "highway safety". Without denying the need and existence of highway safety, appellant's position is that such does not demand any such restriction of freedom as is so urged. American Motorcycle Association v. Davids, 158 N.W. 2d 72 (1968 Mich. App.), and the yet unreported decision of the Illinois Supreme Court in Illinois v. Fries, ___Ill __ , ___ N.W. 2d___(1969) both voiding similar state laws.

The reasoning urged by the appellee that the public welfare demands such regulation carried to its logical conclusion would infer that the state may forbid smoking, regulate the hours of sleep and travel, make it a crime to disobey the advise of one's doctor, compel the wearing of heat retaining outer garments in cold weather, forbid walking on ice or other hazardous substances and regulate or restrict the hundreds of other ordinary affairs of life. There never has been constitutional sanction for such enactments no matter how beneficial they appear. As has been noted, the state cannot attain a desirable end by compulsion. Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. ed. 1042 (1923).

CONCLUSION

It is respectfully submitted that the federal question is substantial and requires a full consideration on the merits with briefs and oral arguments.

Respectfully submitted,

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